

**State Law Library of Montana**  
**MONTANA LEGISLATIVE HISTORY**

Chapter 170 Session L 1999  
Bill House \_\_\_\_\_ Senate 189

History and final status sheet X  
Introduced bill X  
Fiscal note NA  
Third reading bill X  
Final version of bill X

House Committee on Business & Labor

Hearing date(s)\* 3-5 3-9

Executive action (vote) date(s)\* 3-9

Comm. Report 3-9

Floor 2nd reading & vote 3-13

Floor 3rd reading & vote 3-15

Senate Committee on Business & Industry

Hearing date(s)\* 1-20 1-21

Executive action (vote) date(s)\* 1-21

Comm. Report 1-21

Floor 2nd reading & vote 1-23;3-17

Floor 3rd reading & vote 1-26;3-18

Conference or Free Conference Comm. \_\_\_\_\_ Yes X No

Hearing date(s)\* \_\_\_\_\_

Executive action (vote) date(s)\* \_\_\_\_\_

\* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? \_\_\_\_\_ Yes X No

Committee \_\_\_\_\_ Report \_\_\_\_\_

NOTES: Revise Certain Licensing Laws Applicable to Real Estate Brokers & Salespersons...



Compiled by: rg

Date: 4-5-2016

# SENATE BILLS AND RESOLUTIONS

125

|      |                                            |    |   |
|------|--------------------------------------------|----|---|
|      | Transmitted to House                       |    |   |
| 2/16 | Referred to Judiciary                      |    |   |
| 3/05 | Hearing                                    |    |   |
| 3/05 | Committee Executive Action--Bill Concurred | 12 | 1 |
| 3/06 | Committee Report--Bill Concurred           |    |   |
| 3/12 | 2nd Reading Concurred                      | 92 | 7 |
| 3/13 | 3rd Reading Concurred                      | 95 | 5 |
|      | Returned to Senate                         |    |   |
| 3/13 | Sent to Enrolling                          |    |   |
| 3/15 | Returned from Enrolling                    |    |   |
| 3/15 | Signed by President                        |    |   |
| 3/16 | Signed by Speaker                          |    |   |
| 3/17 | Transmitted to Governor                    |    |   |
| 3/19 | Signed by Governor                         |    |   |
| 3/23 | Chapter Number Assigned                    |    |   |
|      | Chapter Number 126                         |    |   |
|      | Effective Date: 10/01/1999 - All Sections  |    |   |

SB 189 Introduced by Berry

LC0445 Drafter: Maly

Revise Certain Licensing Laws Applicable to Real Estate Brokers and Salespersons;...

|      |                                                       |    |   |
|------|-------------------------------------------------------|----|---|
| 1/12 | Introduced and 1st Reading                            |    |   |
| 1/12 | Referred to Business and Industry                     |    |   |
| 1/20 | Hearing                                               |    |   |
| 1/22 | Committee Executive Action--Bill Passed as Amended    | 7  | 0 |
| 1/22 | Committee Report--Bill Passed as Amended              |    |   |
| 1/23 | 2nd Reading Passed                                    | 45 | 1 |
| 1/26 | 3rd Reading Passed                                    | 49 | 0 |
|      | Transmitted to House                                  |    |   |
| 2/16 | Referred to Business and Labor                        |    |   |
| 3/05 | Hearing                                               |    |   |
| 3/09 | Committee Executive Action--Bill Concurred as Amended | 18 | 0 |
| 3/11 | Committee Report--Bill Concurred as Amended           |    |   |
| 3/13 | 2nd Reading Concurred                                 | 92 | 2 |
| 3/15 | 3rd Reading Concurred                                 | 95 | 4 |
|      | Returned to Senate with Amendments                    |    |   |
| 3/17 | 2nd Reading House Amendments Concurred                | 49 | 0 |
| 3/18 | 3rd Reading Passed as Amended by House                | 48 | 0 |
| 3/18 | Sent to Enrolling                                     |    |   |
| 3/19 | Returned from Enrolling                               |    |   |
| 3/22 | Signed by President                                   |    |   |
| 3/23 | Signed by Speaker                                     |    |   |
| 3/23 | Transmitted to Governor                               |    |   |
| 3/24 | Signed by Governor                                    |    |   |
| 3/25 | Chapter Number Assigned                               |    |   |
|      | Chapter Number 170                                    |    |   |
|      | Effective Date: 3/24/1999 - All Sections              |    |   |

SB 190 Introduced by Halligan

LC1505 Drafter: Petesch

Clarify That a Defendant Is Not Limited to a Single Jury Trial in Misdemeanor Cases Filed in a Justice's or City Court;...

INTRODUCED BY *Sen. Bob Berg* <sup>*Sen. Bob Berg*</sup> BILL NO. 189  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE BOARD OF REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314, AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons -- consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee

1 conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation,  
2 must be authenticated by its seal."

3

4 **Section 2.** Section 37-51-310, MCA, is amended to read:

5 **"37-51-310. Renewal.** (1) License fees are due and payable for the ensuing licensure period  
6 a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the  
7 licensure period automatically cancels the license, but otherwise the license remains in effect continuously  
8 from the date of issuance unless suspended or revoked by the board for just cause.

9 (2) A licensee who allows the license to lapse by failing to remit the fees before the expiration  
10 date may have the license reinstated by the board by:

11 (a) within 45 days after the expiration date, providing a satisfactory explanation to the board for  
12 the licensee's failure to renew the license; and

13 (b) paying the current renewal fee prescribed by the board.

14 (3) The board may also charge a late fee equal to twice the current renewal fee, but ~~no~~ not less  
15 than \$100, to a licensee who does not renew the license as required by subsection (1).

16 (4) Upon failure of the licensee to show good cause for failing to submit timely proof of  
17 completion of continuing education as required by the board, the board may immediately suspend the  
18 individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance  
19 with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana  
20 Administrative Procedure Act."

21

22 **Section 3.** Section 37-51-313, MCA, is amended to read:

23 **"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and**  
24 **buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the  
25 relationships between brokers or salespersons and buyers or sellers and are intended to clarify distinctions  
26 between different types of agents in state law and replace the common law as applied to these  
27 relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are  
28 defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties  
29 of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction  
30 and are as provided in this section.

1 (2) A ~~seller's~~ seller agent is obligated to the seller to:

2 (a) act solely in the best interests of the seller;

3 (b) obey promptly and efficiently all lawful instructions of the seller;

4 (c) disclose all relevant and material information that concerns the real estate transaction and that  
5 is known to the ~~seller's~~ seller agent and not known or discoverable by the seller, unless the information  
6 is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~seller's~~  
7 seller agent;

8 (d) safeguard the seller's confidences;

9 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in  
10 complying with the terms established in the listing agreement;

11 (f) fully account to the seller for any funds or property of the seller that comes into the ~~seller's~~  
12 seller agent's possession; and

13 (g) comply with all applicable federal and state laws, rules, and regulations.

14 (3) A ~~seller's~~ seller agent is obligated to the buyer to:

15 (a) disclose to a buyer or the ~~buyer's~~ buyer agent any adverse material facts that concern the  
16 property and that are known to the ~~seller's~~ seller agent, except that the ~~seller's~~ seller agent is not required  
17 to inspect the property or verify any statements made by the seller;

18 (b) disclose to a buyer or the ~~buyer's~~ buyer agent when the ~~seller's~~ seller agent has no personal  
19 knowledge of the veracity of information regarding adverse material facts that concern the property;

20 (c) act in good faith with a buyer and a ~~buyer's~~ buyer agent; and

21 (d) comply with all applicable federal and state laws, rules, and regulations.

22 (4) A ~~buyer's~~ buyer agent is obligated to the buyer to:

23 (a) act solely in the best interests of the buyer;

24 (b) obey promptly and efficiently all lawful instructions of the buyer;

25 (c) disclose all relevant and material information that concerns the real estate transaction and that  
26 is known to the ~~buyer's~~ buyer agent and not known or discoverable by the buyer, unless the information  
27 is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~buyer's~~  
28 buyer agent;

29 (d) safeguard the buyer's confidences;

30 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in

1 complying with the terms established in the buyer broker agreement;

2 (f) fully account to the buyer for any funds or property of the buyer that comes into the ~~buyer's~~  
3 buyer agent's possession; and

4 (g) comply with all applicable federal and state laws, rules, and regulations.

5 (5) A ~~buyer's~~ buyer agent is obligated to the seller to:

6 (a) disclose any adverse material facts that are known to the ~~buyer's~~ buyer agent and that  
7 concern the ability of the buyer to perform on any purchase offer;

8 (b) disclose to the seller or the ~~seller's~~ seller agent when the ~~buyer's~~ buyer agent has no personal  
9 knowledge of the veracity of information regarding adverse material facts that concern the property;

10 (c) act in good faith with a seller and a ~~seller's~~ seller agent; and

11 (d) comply with all applicable federal and state laws, rules, and regulations.

12 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them  
13 to:

14 (a) disclose to:

15 (i) a buyer or a ~~buyer's~~ buyer agent any adverse material facts that concern the property and that  
16 are known to the statutory broker, except that the statutory broker is not required to inspect the property  
17 or verify any statements made by the seller;

18 (ii) a seller or a ~~seller's~~ seller agent any adverse material facts that are known to the statutory  
19 broker and that concern the ability of the buyer to perform on any purchase offer;

20 (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

21 (c) comply with all applicable federal and state laws, rules, and regulations.

22 (7) A dual agent is obligated to a seller in the same manner as a ~~seller's~~ seller agent and is  
23 obligated to a buyer in the same manner as a ~~buyer's~~ buyer agent under this section, except as follows:

24 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are  
25 known to the dual agent, regardless of any confidentiality considerations; and

26 (b) a dual agent may not disclose the following information without the written consent of the  
27 person to whom the information is confidential:

28 (i) the fact that the buyer is willing to pay more than the offered purchase price;

29 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking  
30 for the property;

1 (iii) factors motivating either party to buy or sell; and

2 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

3 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the  
4 earliest of the following dates:

5 (i) completion of performance by the agent;

6 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

7 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker  
8 agreement.

9 (b) A statutory broker's relationship continues until the completion, termination, or abandonment  
10 of the real estate transaction giving rise to the relationship.

11 (9) Upon termination of an agency relationship, a broker or salesperson does not have any further  
12 duties to the principal, except as follows:

13 (a) to account for all money and property of the principal;

14 (b) to keep confidential all information received during the course of the agency relationship that  
15 was made confidential at the principal's direction, except for:

16 (i) subsequent conduct by the principal that authorizes disclosure;

17 (ii) disclosure required by law or to prevent the commission of a crime;

18 (iii) the information being disclosed by someone other than the broker or salesperson; and

19 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the  
20 broker or salesperson, including employees, independent contractors, and subagents.

21 (10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a  
22 statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any  
23 transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error,  
24 exaggeration, misrepresentation, or concealment of pertinent facts."

25  
26 **Section 4.** Section 37-51-314, MCA, is amended to read:

27 **"37-51-314. Relationship disclosure requirements.** (1) A broker or salesperson shall disclose the  
28 existence and nature of relevant agency or other relationships to the parties to a real estate transaction  
29 as provided in this section.

30 (2) A seller agent shall make the required relationship disclosures as follows:

1           (a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the  
2 listing agreement is executed, or, if the seller agent is acting as a seller subagent, at the time negotiations  
3 commence; and

4           (b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided  
5 in subsection (7), must be made to the seller at the time negotiations commence.

6           ~~(b)(c)~~ The disclosure established in subsection (7) must be made to the buyer or buyer agent at  
7 the time negotiations commence.

8           (3) A buyer agent shall make the required relationship disclosures as follows:

9           (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time  
10 the buyer broker agreement is executed, or, if the buyer agent is acting as a buyer subagent, at the time  
11 negotiations commence; and

12           (b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as  
13 provided in subsection (7), must be made to the buyer at the time negotiations commence.

14           ~~(b)(c)~~ The disclosure established in subsection (7) must be made to the seller or seller agent at  
15 the time negotiations commence.

16           (4) A statutory broker shall make the required relationship ~~disclosure to the buyer and seller at~~  
17 ~~the time negotiations commence.~~ disclosures as follows:

18           (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time  
19 the statutory broker first endeavors to locate property for the buyer.

20           (b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller  
21 agent at the time negotiations commence.

22           (5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual  
23 agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent  
24 prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who  
25 contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as  
26 provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given,  
27 any subsequent disclosures must take the form of the disclosure provided in subsection (7).

28           ~~(6) A disclosure required by this section must be signed and dated by the party to whom the~~  
29 ~~disclosure is directed and by the broker or salesperson. A~~ The initial disclosure must contain as required  
30 by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following



1 information:

2 (a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

3 (b) a statement providing that if a seller agent is also representing a buyer or a buyer agent is also  
4 representing a seller with regard to a property, then a dual agency relationship is established. The  
5 statement must include the following: "IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS  
6 EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THIS RELATIONSHIP MAY PROHIBIT THE  
7 DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY  
8 LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A  
9 SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF  
10 BOTH THE SELLER AND THE BUYER".

11 (c) a definition of "adverse material fact";

12 (d) identification of the type of relationship disclosed;

13 (e) the signature of the seller or the buyer to whom the disclosure is given;

14 (f) the signature of the broker or the salesperson making the disclosure; and

15 (g) the date of the disclosure.

16 ~~(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your~~  
17 ~~agent or subagent in the sale of your property located at (address of property). Your seller agent is~~  
18 ~~obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes~~  
19 ~~interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent~~  
20 ~~is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from~~  
21 ~~advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you~~  
22 ~~receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent~~  
23 ~~disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This~~  
24 ~~consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to~~  
25 ~~give this consent, your opportunity to sell your property to that buyer may be lost.~~

26 ~~———— Your seller agent is obligated to you as follows:~~

27 ~~———— (1) to act solely in the best interests of the seller to the exclusion of all other interests, including~~  
28 ~~those of the seller agent;~~

29 ~~———— (2) to obey promptly and efficiently all lawful instructions of the seller;~~

30 ~~———— (3) to disclose to the seller all relevant and material information that concerns the real estate~~

1 ~~transaction and that is known by the seller agent and not known by the seller, unless the information is~~  
2 ~~subject to confidentiality arising from a prior or existing agency relationship;~~

3 ~~—— (4) to safeguard the seller's confidences;~~

4 ~~—— (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as~~  
5 ~~established in the listing agreement;~~

6 ~~—— (6) to fully account to the seller for all funds or property of the seller coming into the seller~~  
7 ~~agent's possession;~~

8 ~~—— (7) to comply with all applicable federal and state laws, rules, and regulations; and~~

9 ~~—— (8) to carry out the terms of the listing agreement."~~

10 ~~—— (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with~~  
11 ~~respect to the seller's property located at (address of property). Although the seller agent is primarily~~  
12 ~~obligated to the seller, the seller agent is obligated to you as specified below:~~

13 ~~—— A seller agent is obligated to a buyer as follows:~~

14 ~~—— (1) to disclose to a buyer any adverse material facts that concern the property and that are~~  
15 ~~known to the seller agent;~~

16 ~~—— (2) to deal in good faith with the buyer; and~~

17 ~~—— (3) to comply with all applicable federal and state laws, rules, and regulations:~~

18 ~~—— "Adverse material fact" means a fact that should be recognized by a broker as being of enough~~  
19 ~~significance as to affect a person's decision to enter into a contract to buy or sell real property and may~~  
20 ~~be a fact that materially affects the value or structural integrity or presents a documented health risk to~~  
21 ~~occupants of the property. The term may not include the fact that an occupant of the property has or has~~  
22 ~~had a communicable disease or that the property was the site of a suicide or felony."~~

23 ~~—— (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your~~  
24 ~~agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.~~  
25 ~~Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller~~  
26 ~~of property that you become interested in, a dual agency may be created. In a dual agency relationship,~~  
27 ~~the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer~~  
28 ~~agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of~~  
29 ~~representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with~~  
30 ~~a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the~~

~~seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.~~

~~—— Your buyer agent is obligated to you as follows:~~

~~—— (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;~~

~~—— (2) to obey promptly and efficiently all lawful instructions of the buyer;~~

~~—— (3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~—— (4) to safeguard the buyer's confidences;~~

~~—— (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;~~

~~—— (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;~~

~~—— (7) to comply with all applicable federal and state laws, rules, and regulations; and~~

~~—— (8) to carry out the terms of the buyer broker agreement."~~

~~—— (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below:~~

~~—— A buyer agent is obligated to a seller as follows:~~

~~—— (1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;~~

~~—— (2) to deal in good faith with the seller; and~~

~~—— (3) to comply with all applicable federal and state laws, rules, and regulations;~~

~~—— "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

~~—— (e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address):~~

~~A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below:~~

~~——— A statutory broker is obligated to the parties as follows:~~

~~——— (1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.~~

~~——— (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;~~

~~——— (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and~~

~~——— (4) to comply with all applicable federal and state laws, rules, and regulations.~~

~~——— "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

~~——— (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:~~

~~——— (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;~~

~~——— (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;~~

~~——— (3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~——— (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;~~

~~——— (5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming~~

into the dual agent's possession;

~~(6) to comply with all applicable federal and state laws, rules, and regulations;~~

~~(7) to carry out the terms of the buyer broker agreement; and~~

~~(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:~~

~~(a) that the buyer is willing to pay more than the buyer has offered for the property;~~

~~(b) that the seller is willing to accept less than the asking price for the property;~~

~~(c) factors motivating the buyer to buy or the seller to sell; and~~

~~(d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.~~

~~"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.~~

~~Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent."~~

(7) The disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) Any disclosure required by this section may contain the following information:

1           (a) a description of the other relationships and corresponding duties available under this part, as  
 2           long as the disclosure clearly indicates the relationship being disclosed;

3           (b) a consent to the creation of a dual agency relationship;

4           (c) other definitions in or provisions of this chapter; and

5           (d) other information not inconsistent with the information required in the disclosure.

6           ~~(7)~~(9) A written disclosure that complies with the provisions of this section must be construed  
 7           as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and  
 8           must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer  
 9           or seller in a real estate transaction."

10

11           Section 5. Section 37-51-321, MCA, is amended to read:

12           **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
 13           board may on its own motion and shall on the sworn complaint in writing of a person investigate the  
 14           actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may  
 15           revoke or suspend a license issued under this chapter when the broker or salesperson has been found  
 16           guilty by a majority of the board of any of the following practices:

17           (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
 18           display, or other nature, which advertising in any material particular or in any material way misrepresents  
 19           any property, terms, values, policies, or services of the business conducted. A broker who operates under  
 20           a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
 21           name, the broker does not incorporate the broker's own name ~~in the franchise name or logotype or does~~  
 22           ~~not conspicuously display, on the broker's letterhead and other printed materials available to the public,~~  
 23           ~~a statement that the broker's office is independently owned and operated and~~ or the trade name, if any,  
 24           by which the office is known in the franchise name or logotype. The board may not adopt advertising  
 25           standards more stringent than those set forth in this subsection.

26           (b) making any false promises of a character likely to influence, persuade, or induce;

27           (c) pursuing a continued and flagrant course of misrepresentation or making false promises  
 28           through agents or salespersons or any medium of advertising or otherwise;

29           (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
 30           insignia of membership in a real estate organization of which the licensee is not a member;

1 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
2 belonging to others;

3 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
4 made for a principal;

5 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
6 to disclose in advertisements for real property the person's dual capacity as broker and principal;

7 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result  
8 from the resale of real property;

9 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
10 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
11 agent;

12 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
13 substituting a new contract with another principal;

14 (k) accepting employment or compensation for appraising real property contingent on the  
15 reporting of a predetermined value or issuing an appraisal report on real property in which the broker or  
16 salesperson has an undisclosed interest;

17 (l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the  
18 broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer  
19 broker agreement in connection with the property granting an exclusive agency to another broker;

20 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
21 influencing a purchaser or prospective purchaser of real property;

22 (n) representing or attempting to represent a real estate broker other than the employer without  
23 the express knowledge or consent of the employer;

24 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
25 of its execution;

26 (p) paying a commission in connection with a real estate sale or transaction to a person who is  
27 not licensed as a real estate broker or real estate salesperson under this chapter;

28 (q) intentionally violating a rule adopted by the board in the interests of the public and in  
29 conformity with this chapter;

30 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody

1 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
2 capacity by a person;

3 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

4 (t) conviction of a felony.

5 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
6 whether by means of printed material, radio, television, or display or by other means, unless the broker  
7 or salesperson has a signed listing agreement from the owner of the property. The listing agreement must  
8 be valid as of the date of advertisement.

9 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
10 information on properties listed by other brokers or salespersons who will cooperate with the selling  
11 broker or salesperson in materials dispensed to prospective customers.

12 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or  
13 revoked as provided in subsection (1)."

14  
15 NEW SECTION. Section 6. Repealer. Sections 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104,  
16 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112,  
17 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, and 76-4-1117, MCA, are repealed.

18  
19 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

20 - END -



**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

**- Committee: (S) Business and Industry -**

04:37 PM

- SB 162 SPONSOR: Crismore, William SHORT TITLE: Expand permissible banking activities  
REFERRED ON: 01/08/1999 HEARD ON: 01/13/1999 (S) Discussed in Committee ON: 01/19/1999  
EXECUTIVE ACTION: 01/21/1999 Bill Passed as Amended -- VOTE: 7 - 0  
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
- 
- SB 187 SPONSOR: Tester, Jon SHORT TITLE: Revise crop dusting lien  
REFERRED ON: 01/12/1999 HEARD ON: 01/20/1999  
EXECUTIVE ACTION: 01/20/1999 Bill Passed -- VOTE: 6 - 0  
FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
- 
- SB 189 SPONSOR: Berry, Dale SHORT TITLE: Revise certain licensing laws applicable to real estate brokers and salespersons  
REFERRED ON: 01/12/1999 HEARD ON: 01/20/1999  
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 7 - 0  
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned
- 
- SB 210 SPONSOR: Lynch, J.D. SHORT TITLE: Clarify the practice of home inspections  
REFERRED ON: 01/14/1999 HEARD ON: 01/22/1999  
EXECUTIVE ACTION: 01/30/1999 Bill Passed -- VOTE: 6 - 0  
FINAL DISPOSITION 04/10/1999 Chapter Number Assigned
- 
- SB 227 SPONSOR: Hertel, John SHORT TITLE: Clarify definition of small telecommunications provider  
REFERRED ON: 01/18/1999 HEARD ON: 01/28/1999  
EXECUTIVE ACTION: 02/02/1999 Bill Passed as Amended -- VOTE: 7 - 0  
FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
- 
- SB 234 SPONSOR: Thomas, Fred SHORT TITLE: Revise work comp laws to allow for case management  
REFERRED ON: 01/19/1999 HEARD ON: 01/27/1999  
EXECUTIVE ACTION: 02/02/1999 Bill Passed -- VOTE: 4 - 3  
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
- 
- SB 240 SPONSOR: Grimes, Duane SHORT TITLE: Require gov entity to pay interest when money owed to contractor is withheld  
REFERRED ON: 01/20/1999 HEARD ON: 01/27/1999  
EXECUTIVE ACTION: 02/11/1999 Bill Passed as Amended -- VOTE: 7 - 0  
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 20, 1999 at  
9:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 187, 1/14/1999;  
SB 189, 1/14/1999  
Executive Action: SB 187

**{Tape : 1; Side : A; Approx. Time Counter : 0}**

**HEARING ON SB 187**

**Sponsor:** SENATOR JON TESTER, SD 45, BIG SANDY

**Proponents:** Bob Gilbert, MT Aviation Trade Assoc.  
Wayne Turner, MT Aviation Trades Assoc.  
Darrold Hutchinson,

days certified notice before they could file. You could end up with only 60 days left. Typically, winter crops are sprayed in early May and spring crops in early to mid-June. Then you're given 90 days from that time to file a lien. A person doesn't want to file a lien unless necessary and a grower doesn't want a lien filed against him either. If the grower has borrowed from the bank, the crop grown on the land will be listed as collateral. Near the end of the growing season, if the 90 days is coming close and I haven't received payment, I have to give 30 days before I can file a lien. If I spray in May but don't bill until the end of May, I've already used up 30 days. At the end of 60 days I would have to give 30 days notice before I can even file and that's where the problem is.

SEN. MCCARTHY asked if Mr. Turner ever received partial payment before he flew and was told he never had.

{Tape : 1; Side : A; Approx. Time Counter : 10.4}

Closing by Sponsor:

SEN. JON TESTER. The bill basically deals with economics. In order for these folks to maintain a viable business they've got to get the money for the services rendered. To take it a step further, if someone in agriculture doesn't pay the bills, the bills are put on to me and my neighbors in order to make up the difference. I think it's very important and I encourage a DO PASS.

EXECUTIVE ACTION ON SB 187

Motion/Vote: SEN. MCCARTHY moved that SB 187 DO PASS. Motion carried unanimously 6-0.

HEARING ON SB 189

Sponsor: SEN. DALE BERRY, SD 30, Hamilton

Proponents: Zane Sullivan, Montana Association of Realtors

Opponents: None.

Opening Statement by Sponsor: SEN. DALE BERRY, SD 30, Hamilton. Before I start my testimony, I'd like to distribute an amendment EXHIBIT(1). If you scan all the way through the bill, and if you look at the deletions and additions, you'll see that it's a good bill. There are clean-ups and simplifications of old statutes and language and a few things that come about because of referrals outside the lines of the country. There are also a few changes because of the Board of Realty licensing time -- it mandated some things to see that continuing education requirements were kept on a current basis.

Proponents' Testimony: Zane Sullivan, Montana Association of Realtors. I would like to discuss the four parts of the bill with you. This bill was sponsored by SEN. BERRY at the request of the Montana Association of Realtors and in conjunction with the Board of Realty Regulations, Department of Commerce. It is a clean-up, housekeeping bill and is a much simpler bill than it appears. I would like to explain:

Section 1, Section 37-51-306. The reason for the requested change is at the present time the licensing laws for real estate licensees permit them to pay a referral fee to a licensee from another state. However, the current trend is people come to our area from Canada who wish to purchase property and are directed or referred by a Canadian broker to a real estate licensee in Montana. Current law pertains to referral fees payable only to licensees within other states so the question seems to be is it legal for a Montana broker to pay a referral fee to a foreign broker. The Association of Licensed Law Officials has suggested a uniform change in the various jurisdictions which is "state or jurisdiction" as a means of resolving this issue. I am not aware of any reason why a referral fee should not be payable to a licensed broker in another country the same as a state within the United States.

Section 2, Section 37-51-310. It has been, until recently, the Board of Realty Regulation's position that licenses were renewed on an annual basis. As a condition of renewing your license, you were required to provide to the Board staff proof you had completed the credit requirement for the continuing education. There are approximately 5,000 licensees in Montana, which requires a great amount of staff time and expense to complete the paperwork for annual renewal. The Board's suggestion the licenses be renewed every four (4) years should help alleviate

that; however, there is another problem, i.e. how does the Board of Realty Regulation ensure that real estate licensees have obtained the credit hours needed to meet continuing education requirements. There may be as many as 300 licensees who have not provided proof of their continuing education, and 300 contested case proceedings would be an equal burden so the Board is trying to find a way around that by requiring the licensees to provide proof they have completed their education requirements. If they do not provide that proof, or if they are unable to show good cause why they haven't provided that proof, the Board may suspend their license. Opportunity is provided for the licensees to ask for a hearing if they don't agree. So it is a means to deal with those few individuals who may just refuse to respond.

Section 3, Section 37-51-313 - Section 4, Section 37-51-314.

This part was worked on in the 1995 Session but was rather confusing, both to real estate licensees and consumers as to who represented whom. The Montana Association of Realtors attempted to correct the problem by making a multiple disclosure to both sides repeatedly during the course of the transaction. That was a good idea but is extremely complex and I'm not sure the consumers are following a lot of the paperwork; perhaps many licensees are not following the paperwork either. But there has been some good, i.e. the number of complaints to the Board of Realty Regulation has declined as have the number of lawsuits; therefore, perhaps we accomplished our goal. The basic request in this section is to simplify the paperwork process -- we are mandating the substance but not the wording of the requirement. Also, the disclosure is a two-process disclosure -- the licensee, at the time of listing, provides a notice on one (1) sheet to the owner which lists the relationships available and agrees on the one to fit that particular relationship. When a buyer comes along and the negotiations commence, the disclosure says the licensee is representing the seller and you will be represented by your buying agent.

Section 5, Section 37-51-321. Current law requires anyone who is operating as a franchise, for example, Century 21, Better Homes & Gardens, Coldwell Bankers, etc., that any advertising you do requires you to put in a sentence saying each company is independently owned and operated. All we have seen since that was enacted was an increase in cost to the licensee because more lines had to be added to their advertising. What benefit does the consumer derive from that requirement? The law was initially

requested by the franchise company to try to insulate themselves from any potential lawsuits because they didn't want to be sued if the licensee was sued. I'm not sure that is appropriate because it has been in place for many years and I am not aware of any lawsuits or complaints to the Board of Realty Regulation relative to it; therefore, there would be no detriment to the consumer by deleting this provision, but would be a benefit to the licensee because the cost would not be increased.

Section 6, Repealer. These statutes concern the out-of-state sales of in-state subdivision registration process enacted in 1963 and is a provision most people are not familiar with. It is a process that if you're going to advertise out-of-state to sell five (5) or more parcels, five (5) acres or more in size, this subdivision has to be registered with the Board of Realty Regulation, you have to put up a \$2,500 deposit, you must put in your advertising certain notifications that if there are encumbrances on the property any proceeds will be held in escrow until they are paid and you will provide other forms of notification to the Board of Realty Regulation. To my knowledge, no one has ever filed a registration under this statute. I question this law is relevant anymore because times have changed -- we are now more concerned about Internet advertising than we are about newspaper advertising. Many states, through the Board of Realty Regulation, are currently looking at rules for real estate licensees relevant to interstate advertising by the Internet and the Board is currently proposing rules for licensees on Internet advertising. I think Internet advertising regulation will be more pertinent than the current statute here. Also, it seems we're attacking this issue from the wrong end because most states have a law that if someone from another state is going to advertise real estate within their jurisdiction, certain requirements have to be met in the state in which the advertising is done. That is more pertinent than for Montanans to regulate the advertising that will be done in another state. It's unused, is out-of-date, and is superceded by other uniform laws in areas that are more useful than this. I suggest it be deleted from the law.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 28.4}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if it was legal to pay a referral fee to a licensed individual but not to a layman. Zane Sullivan said that was correct. The licensee can either be in Montana or in another state.

SEN. MCCARTHY asked if it was necessary to have the bill effective upon passage & approval, or could it wait until October 1. Mr. Sullivan said the reason for the effective date being "upon passage and approval" was to try to implement the mechanisms of the disclosure. As for the rest of the things, time is that critical.

SEN. MIKE SPRAGUE said some of the repealers implied that if a person was going to advertise and market out-of-state, they were there for the person who was advertising falsely. There will be more regional advertising, reciprocity, etc. Mr. Sullivan said it was part of the Foreign Land Sales Practices Act, where one part of the Act referred to out-of-staters who brought falsely advertised properties into Montana and tried to pawn them off on Montana residents. It's rather a do-nothing act which would require more money and staff time to enforce than is available.

SEN. SPRAGUE commented we don't know the rules in foreign countries and if a Montana opportunist wants to market outside our state, all you have is the state's credibility. That wouldn't really apply to other states regulating themselves. Zane Sullivan agreed we didn't know the laws in foreign countries and if someone in Montana is marketing falsely advertised property in Japan, Montana's reputation could be affected. We're not being effective in that area either.

*{Tape : 1; Side : A; Approx. Time Counter : 37.6}*

SEN. MCCARTHY referred to the sections for which repeal was asked and wondered if false property advertising could be prevented if those sections were enforced, i.e. mountaintop property by Great Falls. Mr. Sullivan said it would depend on whether the property is advertised and sold to people outside Montana, whether they were advertised and sold within Montana as well and whether they were sold by real estate licensees. If they were sold within Montana, the issues could have been addressed in any event. If,

however, they are advertised only outside Montana with no real estate licensee involved, effective enforcement of this section could prevent the problem.

**SEN. MCCARTHY** asked if the Board had looked at the examples and were they sincere they should be repealed. **Mr. Sullivan** said none of this information is being transferred to the Board of Realty Regulation. To my knowledge, the Board of Realty Regulation has received no complaints relative to failure to file a subdivision under this Act.

**SEN. GLENN ROUSH** asked for clarification of "continuing education" -- do you actually attend classes or can you get it through a newsletter, etc. **Zane Sullivan** said the current requirement was they take approved courses and one of the requirements for an approved course was they provide the enrollee with a certificate. The licensee submits an affidavit to the staff of the Board which says he or she has taken the course. It is estimated that as many as 300 people per year don't submit an affidavit. What do you do with those people?

*{Tape : 1; Side : A; Approx. Time Counter : 42}*

**SEN. VICKI COCCHIARELLA** asked about definition of "adverse material facts." **Mr. Sullivan** said it was the initial disclosure given the seller by the listing broker or buyers representative and contained the definition of what was an adverse material fact.

**SEN. COCCHIARELLA** said she saw the definition in the deleted language but wondered where it would be now. **Mr. Sullivan** said it appeared in statute 37-51-313, or at least somewhere in the definition section of the licensing law.

**SEN. COCCHIARELLA** asked if there was anything else that was not being done for the consumer when the language was crossed out.

*{Tape : 1; Side : B; Approx. Time Counter : 0}*

**Zane Sullivan** said (first few words lost when turning the tape)...no, some licensees felt it was overkill and perhaps it may be. But it still seems important to tell both sides. The



amount of paper is cut down and the content can be made smaller; however, certain elements must still be there.

**SEN. JOHN HERTEL** asked about the amendments **EXHIBIT(1)** and asked the reason for the changes. **Mr. Sullivan** said they should have gotten into the original draft but didn't. Amendment #1 "replace the duties" was current law and this was just a typographical error. The rest of the amendments were self-explanatory.

**SEN. SPRAGUE** asked for explanation why all the repealers were necessary -- he was trying to look out for unintended consequences. **Zane Sullivan** said that is a registration act and if parts were removed while others remained, serious damage will result to the effectiveness of the act. The Board's concern was it was an unused provision that isn't being enforced or utilized. But if the legislature feels very strongly it should stay, it probably isn't a life or death issue.

*{Tape : 1; Side : B; Approx. Time Counter : 4.8}*

Closing by Sponsor:

**SEN. DALE BERRY.** I sat on the Board of Realty Regulation up until my election to the Legislature. It is an extremely busy Board -- they read up to 1,000 pages per month of complaints and some of these issues never come up, i.e. trying to monitor a subdivision, mountaintop property in Great Falls, etc. I am a practitioner in real estate who works with clients and who is constantly working on upgrading the forms, etc., and trying to simplify them. When you sit down as a broker with the buyer and go through each disclosure, they're not interested in the bulky and confusing language. **SB 189** cleans this up.

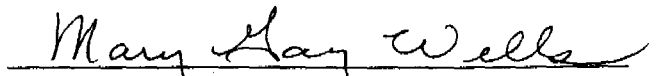
January 20, 1999

PAGE 11 of 11

ADJOURNMENT

Adjournment: 9:56 A.M.

  
SEN. JOHN HERTEL, Chairman

  
MARY GAY WELLS, Secretary

JH/MGW

DATE 1/20/99

DATE

1/20/99

25

Amendments to Senate Bill No. 189  
1st Reading Copy

For the Senate Business and Industry Committee

Prepared by Stephan Maly  
January 13, 1999

1. Page 2, lines 25 and 26.

Following: "intended to" on line 25

Strike: the remainder of line 25 through "types" on line 26

Insert: "replace the duties"

Following: "agents" on line 26

Insert: "as provided elsewhere"

2. Page 6, line 6 and line 14.

Following: "The"

Insert: "subsequent" in both places

3. Page 7, lines 3, 4 and 5.

Following: "statement" on line 3

Strike: the remainder of line 3 through "following:" on line 5

Insert: "that reads as follows: "IF A SELLER AGENT IS ALSO  
REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A  
SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY  
RELATIONSHIP MAY BE ESTABLISHED."

4. Page 7, line 6.

Following: "BUYER."

Strike: "THIS RELATIONSHIP"

Insert: "THESE OBLIGATIONS"

5. Page 11, line 23.

Following: "The"

Insert: "subsequent"

- END -

DATE Jan. 20, 1999

SENATE COMMITTEE ON ~~SB 187 + SB 189~~ Bus. + Ind.

BILLS BEING HEARD TODAY: SB 187 + 189

< ■ >

PLEASE PRINT

< ■ >

Check One

| Name                | Representing              | Bill No. | Support | Oppose |
|---------------------|---------------------------|----------|---------|--------|
| Wayne Turner        | Mt. Aviation Trades Assn  | 187      | X       |        |
| ZANE SULLIVAN       | MT. Assoc. of REALTORS    | 189      | X       |        |
| Darrolle Hutchinson | Ass of Mt Civil Applctors | 187      | X       |        |
| Bob Stephens        | Mt. Grain Growers         | 187      | X       |        |
| Bob Gilbert         | MATP<br>AOMRA             | 187      | X       |        |
| Pam Langley         | Montana AgriBusiness Assn | 187      | X       |        |
|                     |                           |          |         |        |
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## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 21, 1999 at  
9:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)  
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 107, 1/14/1999  
SB 130, 1/18/1999  
SB 132, 1/14/1999  
Executive Action: SB 162; SB 189

**HEARING ON SB 107**

**Sponsor:** SENATOR DALE MAHLUM, SD 35, MISSOULA

**Proponents:** Frank Cote, Deputy Insurance Commissioner, State  
Auditor's Office  
Kim Brown, Attorneys Liability Protection Society,  
Missoula

Discussion: SEN. COCCHIARELLA said that she had talked with a banker and title insurance would be like going into another business for them. It would not be something a bank would do. It would double the staff of a small bank. So taking title insurance would be appropriate.

Vote: Motion carried unanimously. 7-0

Motion/Vote: SEN. COCCHIARELLA moved that SB 162 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 1; Side : B; Approx. Time Counter : 24.8}

EXECUTIVE ACTION ON SB 189

Motion: SEN. ROUSH moved that SB 189 DO PASS.

Discussion: None

Motion: SEN. MCCARTHY moved that SB 189 BE AMENDED.

Discussion: Bart Campbell explained the amendments saying they had been edited. As far as the actual explanation, if the committee would recall yesterday that SEN. SPRAGUE asked the realtor from Missoula to explain what the amendments did. The realtor went into great detail. He would go through it again if the committee so desired. The biggest one was on Number 3. It was an attempt to clarify the relationship between a realtor and a buyer and a realtor and a seller as to who the realtor is representing.

SEN. HERTEL asked SEN. BERRY if any of the amendments EXHIBIT(6) would be detrimental to his bill. SEN. BERRY said that the amendments were fine and necessary.

Vote: Motion carried unanimously. 7-0

Motion/Vote: SEN. COCCHIARELLA moved that SB 189 DO PASS AS AMENDED. Motion carried unanimously. 7-0

DATE 1-21-99

32



Amendments to Senate Bill No. 189  
1st Reading CopyDATE 1-21-99BILL NO. SB 189

For the Senate Business and Industry Committee

Prepared by Stephan Maly  
January 13, 1999

1. Page 2, lines 25 and 26.

Following: "intended to" on line 25

Strike: the remainder of line 25 through "types" on line 26

Insert: "replace the duties"

Following: "agents" on line 26

Insert: "as provided elsewhere"

2. Page 6, line 6 and line 14.

Following: "The"

Insert: "subsequent" in both places

3. Page 7, lines 3, 4 and 5.

Following: "statement" on line 3Strike: the remainder of line 3 through "following:" on line 5Insert: "that reads as follows: "IF A SELLER AGENT IS ALSO  
REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A  
SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY  
RELATIONSHIP MAY BE ESTABLISHED."

4. Page 7, line 6.

Following: "BUYER."Strike: "THIS RELATIONSHIP"

Insert: "THESE OBLIGATIONS"

5. Page 11, line 23.

Following: "The"

Insert: "subsequent"

- END -



## SENATE STANDING COMMITTEE REPORT

January 21, 1999

Page 1 of 2

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 189** (first reading copy -- white) do pass as amended.

Signed: *Sen J Hertel*  
Senator John Hertel, Chair

And, that such amendments read:

1. Page 2, lines 25 and 26.

**Following:** "intended to" on line 25

**Strike:** the remainder of line 25 through "types" on line 26

**Insert:** "replace the duties"

**Following:** "agents" on line 26

**Insert:** "as provided elsewhere"

2. Page 6, line 6 and line 14.

**Following:** "The"

**Insert:** "subsequent" in both places

3. Page 7, lines 3, 4 and 5.

**Following:** "statement" on line 3

**Strike:** the remainder of line 3 through "following:" on line 5

**Insert:** "that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED."

4. Page 7, line 6.

**Following:** "BUYER."

**Strike:** "THIS RELATIONSHIP"

**Insert:** "THESE OBLIGATIONS"

Committee Vote:

Yes 7, No 0.

161454SC.sjo

34

5. Page 11, line 23.

**Following:** "The"

**Insert:** "subsequent"

- END -

2<sup>nd</sup> Reading

SENATE JOURNAL  
EIGHTEENTH LEGISLATIVE DAY - JANUARY 23, 1999

**SB 162** - Senator W. Crismore moved SB 162 do pass. Motion carried unanimously.

Senator Taylor excused at this time.

**SB 166** - Senator J. Lynch moved SB 166 do pass. Motion carried unanimously.

**SB 176** - Senator J. Bohlinger moved SB 176 do pass. Motion carried unanimously.

**SB 188** - Senator T. Beck moved SB 188 do pass. Motion carried with Senator Waterman voting nay.

Senator Taylor present at this time.

**SB 189** - Senator D. Berry moved SB 189 do pass. Motion carried as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Hertel, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.

Total 45

Nays: Mohl.

Total 1

Absent or not voting: None.

Total 0

Excused: Eck, Harp, Holden, Toews.

Total 4

**SB 192** - Senator J. Bohlinger moved SB 192 do pass. After discussion, Senator Bohlinger made a substitute motion that consideration of SB 192 be passed for the day. Motion carried unanimously.

**SB 193** - Senator D. Hargrove moved SB 193 do pass. Motion carried unanimously.

**SB 195** - Senator J. Lynch moved SB 195 do pass. Motion carried as follows:

Yeas: Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Ekegren, Ellis, Franklin, Glaser, Grimes, Halligan, Hargrove, Hertel, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Tester, Thomas, Wells, Wilson, Mr. President.

Total 40

Nays: Bartlett, Ellingson, Grosfield, Mohl, Taylor, Waterman.

Total 6

Absent or not voting: None.

Total 0

Excused: Eck, Harp, Holden, Toews.

3<sup>rd</sup> Reading

SENATE JOURNAL  
TWENTIETH LEGISLATIVE DAY - JANUARY 26, 1999

Excused: Cocchiarella.  
Total 1

**SB 188** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.  
Total 47

Nays: Ellingson, Waterman.  
Total 2

Absent or not voting: None.  
Total 0

Excused: Cocchiarella.  
Total 1

**SB 189** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Cocchiarella.  
Total 1

**SB 192** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.

**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

- Committee: (H) Business and Labor -

01:05 PM

- SB 189 SPONSOR: Berry, Dale SHORT TITLE: Revise certain licensing laws applicable to real estate brokers and salespersons  
REFERRED ON: 02/16/1999 HEARD ON: 03/05/1999  
EXECUTIVE ACTION: 03/09/1999 Bill Concurred as Amended -- VOTE: 18 - 0  
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned
- 
- SB 210 SPONSOR: Lynch, J.D. SHORT TITLE: Clarify the practice of home inspections  
REFERRED ON: 02/16/1999 HEARD ON: 03/03/1999  
EXECUTIVE ACTION: 03/03/1999 Bill Concurred as Amended -- VOTE: 12 - 4  
FINAL DISPOSITION 04/10/1999 Chapter Number Assigned
- 
- SB 217 SPONSOR: Miller, Ken SHORT TITLE: Allow electrical apprentice to take license exam  
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999  
EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 17 - 1  
FINAL DISPOSITION 04/22/1999 (S) Died in Process
- 
- SB 227 SPONSOR: Hertel, John SHORT TITLE: Clarify definition of small telecommunications provider  
REFERRED ON: 02/16/1999 HEARD ON: 03/09/1999  
EXECUTIVE ACTION: 03/09/1999 Bill Concurred -- VOTE: 18 - 0  
FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
- 
- SB 229 SPONSOR: Thomas, Fred SHORT TITLE: Exempt certain school districts from nonconstruction services job classification  
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999  
EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 10 - 8  
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
- 
- SB 234 SPONSOR: Thomas, Fred SHORT TITLE: Revise work comp laws to allow for case management  
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999  
TABLED ON: 03/08/1999  
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
- 
- SB 245 SPONSOR: Waterman, Mignon SHORT TITLE: Adopt wage and hour exemption for home companions for elderly and disabled  
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999  
EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 18 - 0  
FINAL DISPOSITION 03/27/1999 Chapter Number Assigned
-

## 1 SENATE BILL NO. 189

2 INTRODUCED BY D. BERRY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL  
5 ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A  
6 LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL  
7 ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR  
8 NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT  
9 THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE  
10 REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE  
11 BOARD OF REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314,  
12 AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104,  
13 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112,  
14 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE  
15 EFFECTIVE DATE."  
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

## SENATE BILL NO. 189

INTRODUCED BY D. BERRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE BOARD OF REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314, AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons -- consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee



1 conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation,  
2 must be authenticated by its seal."

3  
4 **Section 2.** Section 37-51-310, MCA, is amended to read:

5 **"37-51-310. Renewal.** (1) License fees are due and payable for the ensuing licensure period at  
6 a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the  
7 licensure period automatically cancels the license, but otherwise the license remains in effect continuously  
8 from the date of issuance unless suspended or revoked by the board for just cause.

9 (2) A licensee who allows the license to lapse by failing to remit the fees before the expiration  
10 date may have the license reinstated by the board by:

11 (a) within 45 days after the expiration date, providing a satisfactory explanation to the board for  
12 the licensee's failure to renew the license; and

13 (b) paying the current renewal fee prescribed by the board.

14 (3) The board may also charge a late fee equal to twice the current renewal fee, but ~~no~~ not less  
15 than \$100, to a licensee who does not renew the license as required by subsection (1).

16 (4) Upon failure of the licensee to show good cause for failing to submit timely proof of  
17 completion of continuing education as required by the board, the board may immediately suspend the  
18 individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance  
19 with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana  
20 Administrative Procedure Act."

21  
22 **Section 3.** Section 37-51-313, MCA, is amended to read:

23 **"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and**  
24 **buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the  
25 relationships between brokers or salespersons and buyers or sellers and are intended to clarify distinctions  
26 between different types ~~REPLACE THE DUTIES of agents AS PROVIDED ELSEWHERE in state law and~~ replace the  
27 common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent",  
28 as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used  
29 elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with  
30 a party to a real estate transaction and are as provided in this section.

(2) A ~~seller's~~ seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~seller's~~ seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~seller's~~ seller agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the ~~seller's~~ seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A ~~seller's~~ seller agent is obligated to the buyer to:

(a) disclose to a buyer or the ~~buyer's~~ buyer agent any adverse material facts that concern the property and that are known to the ~~seller's~~ seller agent, except that the ~~seller's~~ seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the ~~buyer's~~ buyer agent when the ~~seller's~~ seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a ~~buyer's~~ buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A ~~buyer's~~ buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~buyer's~~ buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~buyer's~~ buyer agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in

1 complying with the terms established in the buyer broker agreement;

2 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's  
3 buyer agent's possession; and

4 (g) comply with all applicable federal and state laws, rules, and regulations.

5 (5) A ~~buyer's~~ buyer agent is obligated to the seller to:

6 (a) disclose any adverse material facts that are known to the ~~buyer's~~ buyer agent and that  
7 concern the ability of the buyer to perform on any purchase offer;

8 (b) disclose to the seller or the ~~seller's~~ seller agent when the ~~buyer's~~ buyer agent has no personal  
9 knowledge of the veracity of information regarding adverse material facts that concern the property;

10 (c) act in good faith with a seller and a ~~seller's~~ seller agent; and

11 (d) comply with all applicable federal and state laws, rules, and regulations.

12 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them  
13 to:

14 (a) disclose to:

15 (i) a buyer or a ~~buyer's~~ buyer agent any adverse material facts that concern the property and that  
16 are known to the statutory broker, except that the statutory broker is not required to inspect the property  
17 or verify any statements made by the seller;

18 (ii) a seller or a ~~seller's~~ seller agent any adverse material facts that are known to the statutory  
19 broker and that concern the ability of the buyer to perform on any purchase offer;

20 (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

21 (c) comply with all applicable federal and state laws, rules, and regulations.

22 (7) A dual agent is obligated to a seller in the same manner as a ~~seller's~~ seller agent and is  
23 obligated to a buyer in the same manner as a ~~buyer's~~ buyer agent under this section, except as follows:

24 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are  
25 known to the dual agent, regardless of any confidentiality considerations; and

26 (b) a dual agent may not disclose the following information without the written consent of the  
27 person to whom the information is confidential:

28 (i) the fact that the buyer is willing to pay more than the offered purchase price;

29 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking  
30 for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 4. Section 37-51-314, MCA, is amended to read:

"37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

1           (a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the  
2 listing agreement is executed, or, if the seller agent is acting as a seller subagent, at the time negotiations  
3 commence; and

4           (b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided  
5 in subsection (7), must be made to the seller at the time negotiations commence.

6           ~~(b)(c)~~ The SUBSEQUENT disclosure established in subsection (7) must be made to the buyer or buyer  
7 agent at the time negotiations commence.

8           (3) A buyer agent shall make the required relationship disclosures as follows:

9           (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time  
10 the buyer broker agreement is executed, or, if the buyer agent is acting as a buyer subagent, at the time  
11 negotiations commence; and

12           (b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as  
13 provided in subsection (7), must be made to the buyer at the time negotiations commence.

14           ~~(b)(c)~~ The SUBSEQUENT disclosure established in subsection (7) must be made to the seller or seller  
15 agent at the time negotiations commence.

16           (4) A statutory broker shall make the required relationship ~~disclosure to the buyer and seller at~~  
17 ~~the time negotiations commence.~~ disclosures as follows:

18           (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time  
19 the statutory broker first endeavors to locate property for the buyer.

20           (b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller  
21 agent at the time negotiations commence.

22           (5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual  
23 agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent  
24 prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who  
25 contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as  
26 provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given,  
27 any subsequent disclosures must take the form of the disclosure provided in subsection (7).

28           (6) ~~A disclosure required by this section must be signed and dated by the party to whom the~~  
29 ~~disclosure is directed and by the broker or salesperson. A~~ The initial disclosure must contain as required  
30 by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following

1 information:

2 (a) a description of the duties owed by the broker and the salesperson as set forth in 37-61-313;

3 (b) a statement providing that if a seller agent is also representing a buyer or a buyer agent is also  
4 representing a seller with regard to a property, then a dual agency relationship is established. The  
5 statement must include the following: THAT READS AS FOLLOWS: "IF A SELLER AGENT IS ALSO  
6 REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A  
7 PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY  
8 RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER.  
9 THIS RELATIONSHIP THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING  
10 EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF  
11 REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL  
12 AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

13 (c) a definition of "adverse material fact";

14 (d) identification of the type of relationship disclosed;

15 (e) the signature of the seller or the buyer to whom the disclosure is given;

16 (f) the signature of the broker or the salesperson making the disclosure; and

17 (g) the date of the disclosure.

18 ~~(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your~~  
19 ~~agent or subagent in the sale of your property located at (address of property). Your seller agent is~~  
20 ~~obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes~~  
21 ~~interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent~~  
22 ~~is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from~~  
23 ~~advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you~~  
24 ~~receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent~~  
25 ~~disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This~~  
26 ~~consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to~~  
27 ~~give this consent, your opportunity to sell your property to that buyer may be lost.~~

28 ~~Your seller agent is obligated to you as follows:~~

29 ~~(1) to act solely in the best interests of the seller to the exclusion of all other interests, including~~  
30 ~~those of the seller agent;~~

- 1 ~~\_\_\_\_\_ (2) to obey promptly and efficiently all lawful instructions of the seller;~~
- 2 ~~\_\_\_\_\_ (3) to disclose to the seller all relevant and material information that concerns the real estate~~
- 3 ~~transaction and that is known by the seller agent and not known by the seller, unless the information is~~
- 4 ~~subject to confidentiality arising from a prior or existing agency relationship;~~
- 5 ~~\_\_\_\_\_ (4) to safeguard the seller's confidences;~~
- 6 ~~\_\_\_\_\_ (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as~~
- 7 ~~established in the listing agreement;~~
- 8 ~~\_\_\_\_\_ (6) to fully account to the seller for all funds or property of the seller coming into the seller~~
- 9 ~~agent's possession;~~
- 10 ~~\_\_\_\_\_ (7) to comply with all applicable federal and state laws, rules, and regulations; and~~
- 11 ~~\_\_\_\_\_ (8) to carry out the terms of the listing agreement."~~

12 ~~\_\_\_\_\_ (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with~~

13 ~~respect to the seller's property located at (address of property). Although the seller agent is primarily~~

14 ~~obligated to the seller, the seller agent is obligated to you as specified below:~~

15 ~~\_\_\_\_\_ A seller agent is obligated to a buyer as follows:~~

- 16 ~~\_\_\_\_\_ (1) to disclose to a buyer any adverse material facts that concern the property and that are~~
- 17 ~~known to the seller agent;~~
- 18 ~~\_\_\_\_\_ (2) to deal in good faith with the buyer; and~~
- 19 ~~\_\_\_\_\_ (3) to comply with all applicable federal and state laws, rules, and regulations;~~

20 ~~\_\_\_\_\_ "Adverse material fact" means a fact that should be recognized by a broker as being of enough~~

21 ~~significance as to affect a person's decision to enter into a contract to buy or sell real property and may~~

22 ~~be a fact that materially affects the value or structural integrity or presents a documented health risk to~~

23 ~~occupants of the property. The term may not include the fact that an occupant of the property has or has~~

24 ~~had a communicable disease or that the property was the site of a suicide or felony."~~

25 ~~\_\_\_\_\_ (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your~~

26 ~~agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.~~

27 ~~Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller~~

28 ~~of property that you become interested in, a dual agency may be created. In a dual agency relationship,~~

29 ~~the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer~~

30 ~~agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of~~

1 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with  
2 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the  
3 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller  
4 declines to give this consent, your opportunity to acquire the seller's property may be lost.

5 Your buyer agent is obligated to you as follows:

6 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including  
7 those of the buyer agent;

8 (2) to obey promptly and efficiently all lawful instructions of the buyer;

9 (3) to disclose to the buyer all relevant and material information that concerns the real estate  
10 transaction and that is known by the buyer agent and not known by the buyer, unless the information is  
11 subject to confidentiality arising from a prior or existing agency relationship;

12 (4) to safeguard the buyer's confidences;

13 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as  
14 established in the buyer broker agreement;

15 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer  
16 agent's possession;

17 (7) to comply with all applicable federal and state laws, rules, and regulations; and

18 (8) to carry out the terms of the buyer broker agreement."

19 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with  
20 respect to the seller's property located at (address of property). Although the buyer agent is primarily  
21 obligated to the buyer, the buyer agent is obligated to you as specified below:

22 A buyer agent is obligated to a seller as follows:

23 (1) to disclose to a seller any adverse material facts that concern the ability of the buyer to  
24 perform on any purchase offer and that are known to the buyer agent;

25 (2) to deal in good faith with the seller; and

26 (3) to comply with all applicable federal and state laws, rules, and regulations.

27 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
28 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
29 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
30 proposed or existing contract."



~~1 (e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be~~  
~~2 involved as a statutory broker with respect to the purchase and sale of real property located at (address).~~  
~~3 A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a~~  
~~4 sale of the property. A statutory broker is obligated to the buyer and seller as specified below:~~

~~5 A statutory broker is obligated to the parties as follows:~~

~~6 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known~~  
~~7 to the statutory broker and not known to the buyer. However, the statutory broker is not required to~~  
~~8 conduct an independent inspection of the property or to verify any representation made by the seller.~~

~~9 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability~~  
~~10 to perform on the purchase offer and that is known to the statutory broker and not known to the seller;~~

~~11 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the~~  
~~12 property; and~~

~~13 (4) to comply with all applicable federal and state laws, rules, and regulations.~~

~~14 "Adverse material fact" means a fact that should be recognized by a broker as being of enough~~  
~~15 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may~~  
~~16 be a fact that materially affects the value or structural integrity or presents a documented health risk to~~  
~~17 occupants of the property, but may not include the fact that an occupant of the property has or has had~~  
~~18 a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that~~  
~~19 materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or~~  
~~20 existing contract."~~

~~21 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer~~  
~~22 interested in purchasing the property and of the seller of the property located at (address of property).~~  
~~23 A dual agent is obligated to the buyer and seller as follows:~~

~~24 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests~~  
~~25 including the dual agent's;~~

~~26 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;~~

~~27 (3) to disclose to the buyer and seller all relevant and material information that concerns the real~~  
~~28 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the~~  
~~29 information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~30 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives~~

1 ~~as established in the listing agreement and buyer broker agreement;~~

2 ~~—— (5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming~~  
3 ~~into the dual agent's possession;~~

4 ~~—— (6) to comply with all applicable federal and state laws, rules, and regulations;~~

5 ~~—— (7) to carry out the terms of the buyer broker agreement; and~~

6 ~~—— (8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a~~  
7 ~~buyer or a seller any adverse material facts that are known to the dual agent, regardless of any~~  
8 ~~confidentiality considerations. The following may not be disclosed without the written consent of the~~  
9 ~~party to whom the information is confidential:~~

10 ~~—— (a) that the buyer is willing to pay more than the buyer has offered for the property;~~

11 ~~—— (b) that the seller is willing to accept less than the asking price for the property;~~

12 ~~—— (c) factors motivating the buyer to buy or the seller to sell; and~~

13 ~~—— (d) any other information that a party specifically indicates in writing to the dual agent is to be~~  
14 ~~kept confidential and that is not an adverse material fact.~~

15 ~~—— "Adverse material fact" means a fact that should be recognized by a broker as being of enough~~  
16 ~~significance as to affect a person's decision to enter into a contract to buy or sell real property. It may~~  
17 ~~be a fact that materially affects the value or structural integrity or presents a documented health risk to~~  
18 ~~occupants of the property, but may not include the fact that an occupant of the property has or has had~~  
19 ~~a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that~~  
20 ~~materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or~~  
21 ~~existing contract.~~

22 ~~—— Upon signing this disclosure form, the buyer and seller acknowledge that they understand the~~  
23 ~~obligations owed by a dual agent to them and consent to the dual agent representing them as a dual~~  
24 ~~agent."~~

25 (7) The SUBSEQUENT disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5)  
26 or otherwise necessitated by a change or prospective change in a relationship described in a previous  
27 disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g),  
28 and may be included in other documents involved in the real estate transaction. If a seller or buyer has  
29 not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a  
30 subsequent disclosure must include all the information required in subsection (6), including the seller's or

1 buyer's written consent to the dual agency relationship.

2 (8) Any disclosure required by this section may contain the following information:

3 (a) a description of the other relationships and corresponding duties available under this part, as  
4 long as the disclosure clearly indicates the relationship being disclosed;

5 (b) a consent to the creation of a dual agency relationship;

6 (c) other definitions in or provisions of this chapter; and

7 (d) other information not inconsistent with the information required in the disclosure.

8 ~~(7)~~(9). A written disclosure that complies with the provisions of this section must be construed  
9 as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and  
10 must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer  
11 or seller in a real estate transaction."

12  
13 Section 5. Section 37-51-321, MCA, is amended to read:

14 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1)** The  
15 board may on its own motion and shall on the sworn complaint in writing of a person investigate the  
16 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may  
17 revoke or suspend a license issued under this chapter when the broker or salesperson has been found  
18 guilty by a majority of the board of any of the following practices:

19 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
20 display, or other nature, which advertising in any material particular or in any material way misrepresents  
21 any property, terms, values, policies, or services of the business conducted. A broker who operates under  
22 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
23 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does  
24 not conspicuously display, on the broker's letterhead and other printed materials available to the public,  
25 a statement that the broker's office is independently owned and operated and or the trade name, if any,  
26 by which the office is known in the franchise name or logotype. The board may not adopt advertising  
27 standards more stringent than those set forth in this subsection.

28 (b) making any false promises of a character likely to influence, persuade, or induce;

29 (c) pursuing a continued and flagrant course of misrepresentation or making false promises  
30 through agents or salespersons or any medium of advertising or otherwise;

1 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
2 insignia of membership in a real estate organization of which the licensee is not a member;

3 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
4 belonging to others;

5 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
6 made for a principal;

7 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
8 to disclose in advertisements for real property the person's dual capacity as broker and principal;

9 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result  
10 from the resale of real property;

11 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
12 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
13 agent;

14 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
15 substituting a new contract with another principal;

16 (k) accepting employment or compensation for appraising real property contingent on the  
17 reporting of a predetermined value or issuing an appraisal report on real property in which the broker or  
18 salesperson has an undisclosed interest;

19 (l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the  
20 broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer  
21 broker agreement in connection with the property granting an exclusive agency to another broker;

22 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
23 influencing a purchaser or prospective purchaser of real property;

24 (n) representing or attempting to represent a real estate broker other than the employer without  
25 the express knowledge or consent of the employer;

26 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
27 of its execution;

28 (p) paying a commission in connection with a real estate sale or transaction to a person who is  
29 not licensed as a real estate broker or real estate salesperson under this chapter;

30 (q) intentionally violating a rule adopted by the board in the interests of the public and in

1 conformity with this chapter;

2 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
3 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
4 capacity by a person;

5 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

6 (t) conviction of a felony.

7 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
8 whether by means of printed material, radio, television, or display or by other means, unless the broker  
9 or salesperson has a signed listing agreement from the owner of the property. The listing agreement must  
10 be valid as of the date of advertisement.

11 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
12 information on properties listed by other brokers or salespersons who will cooperate with the selling  
13 broker or salesperson in materials dispensed to prospective customers.

14 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or  
15 revoked as provided in subsection (1)."

16  
17 NEW SECTION. Section 6. Repealer. Sections 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104,  
18 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112,  
19 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, and 76-4-1117, MCA, are repealed.

20  
21 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

22 - END -

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN BRUCE SIMON**, on March 5, 1999 at 8:00 A.M., in Room 104 Capitol.

**ROLL CALL**

**Members Present:**

Rep. Bruce Simon, Chairman (R)  
Rep. Bob Pavlovich, Vice Chairman (D)  
Rep. Paul Sliter, Vice Chairman (R)  
Rep. Joe Barnett (R)  
Rep. Rod Bitney (R)  
Rep. David Ewer (D)  
Rep. Carol C. Juneau (D)  
Rep. Billie Krenzler (D)  
Rep. Bob Lawson (R)  
Rep. Gay Ann Masolo (R)  
Rep. Gary Matthews (D)  
Rep. Joe McKenney (R)  
Rep. Carolyn Squires (D)  
Rep. Cliff Trexler (R)  
Rep. Carley Tuss (D)

**Members Excused:** Rep. Sylvia Bookout-Reinicke (R)  
Rep. Roy Brown (R)  
Rep. Jay Stovall (R)

**Members Absent:** None.

**Staff Present:** Stephen Maly, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 27 SB 189, SB 162, SB 289,  
3/3/1999  
Executive Action: SB 162, SB 289,

Brad Griffin, MT Retail Assn. Proponent with amendments.

EXHIBIT(7)

{Tape : 1; Side : B; Approx. Time Counter : 145 - 171}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Bitney, Pavlovich, Juneau, Sliter, Ewer, Krenzler and Simon question witnesses.

{Tape : 1; Side : B; Approx. Time Counter : 171 - 500}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 65}

Closing by Sponsor: Senator Hertel closed

{Tape : 2; Side : A; Approx. Time Counter : 65 - 127}

HEARING ON SB 189

Opening Statement by Sponsor: Senator Berry introduced SB 189

{Tape : 2; Side : A; Approx. Time Counter : 127 - 164}

Proponents' Testimony: John Tabaracci, MT Realtor

{Tape : 2; Side : A; Approx. Time Counter : 164 - 308}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: Senator Berry closed

{Tape : 2; Side : A; Approx. Time Counter : 308 - 500}

HEARING ON SB 162

Opening Statement by Sponsor: Senator Crismore introduced SB 162

{Tape : 2; Side : B; Approx. Time Counter : 0 - 6} EXHIBIT(8)

Proponents' Testimony: George Bennett, MT Bankers Assn

{Tape : 2; Side : B; Approx. Time Counter : 6 - 70}

Al Pontrelli, MT Assn of Life Underwriters

{Tape : 2; Side : B; Approx. Time Counter : 70 - 78}

Don Hutchinson, Dept of Commerce, Banking Commissioner

{Tape : 2; Side : B; Approx. Time Counter : 78 - 88}

Beth O'Halleron, State Auditors

{Tape : 2; Side : B; Approx. Time Counter : 88 - 96}

# HOUSE OF REPRESENTATIVES

## BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/5/99

| NAME                        | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| Chairman Bruce Simon        | X       |        |         |
| Rep. Paul Sliter            | X       |        |         |
| Rep. Bob Pavlovich          | X       |        |         |
| Rep. Joe Barnett            | X       |        |         |
| Rep. Rod Bitney             | X       |        |         |
| Rep. Sylvia Bookout-Reineke |         |        | X       |
| Rep. Roy Brown              |         |        | X       |
| Rep. David Ewer             | X       |        |         |
| Rep. Billie Krenzler        | X       |        |         |
| Rep. Bob Lawson             | X       |        |         |
| Rep. Gay Ann Masolo         | X       |        |         |
| Rep. Gary Matthews          | X       |        |         |
| Rep. Joe McKenney           | X       |        |         |
| Rep. Carolyn Squires        | X       |        |         |
| Rep. Jay Stovall            |         |        | X       |
| Rep. Carley Tuss            | X       |        |         |
| Rep. Carol Juneau           | X       |        |         |
| Rep. Cliff Trexler          | X       |        |         |
|                             |         |        |         |
|                             |         |        |         |
|                             |         |        |         |
|                             |         |        |         |



# MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE 3-5-99

BILL NO. SB 189

SPONSOR(S) \_\_\_\_\_

TYPE  
PROPONENT (P)    OPPONENT (O)    INFORMATIONAL (I)

**PLEASE PRINT**

PLEASE  
CIRCLE

NAME

ADDRESS

REPRESENTING

|                                      |                |          |     |
|--------------------------------------|----------------|----------|-----|
| <input checked="" type="radio"/> POI | John Tabaracci | Missoula | MAK |
| <input type="radio"/> POI            |                |          |     |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN BRUCE SIMON**, on March 9, 1999 at 8:00 A.M., in Room 104 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Bruce Simon, Chairman (R)  
Rep. Bob Pavlovich, Vice Chairman (D)  
Rep. Paul Sliter, Vice Chairman (R)  
Rep. Joe Barnett (R)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Roy Brown (R)  
Rep. David Ewer (D)  
Rep. Carol C. Juneau (D)  
Rep. Billie Krenzler (D)  
Rep. Bob Lawson (R)  
Rep. Gay Ann Masolo (R)  
Rep. Gary Matthews (D)  
Rep. Joe McKenney (R)  
Rep. Carolyn Squires (D)  
Rep. Jay Stovall (R)  
Rep. Cliff Trexler (R)  
Rep. Carley Tuss (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Stephen Maly, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 227, SB 127, SB 169, SB 67,  
SB 319,, 3/3/1999  
Executive Action: SB 127, SB 227, SB 67, SB 108,  
SB 169, SB 189

Motion/Vote: REP. TUSS moved that SB 67 BE CONCURRED IN. Motion failed 4-13 with Pavlovich, Squires, Stovall, and Trexler voting aye.

{Tape : 3; Side : A; Approx. Time Counter : 400 - 500}

Motion/Vote: REP. KRENZLER moved that SB 67 BE TABLED. Motion carried 13-4 with Pavlovich, Squires, Stovall, and Trexler voting no.

{Tape : 3; Side : B; Approx. Time Counter : 0 - 69}

EXECUTIVE ACTION ON SB 108

Motion: REP. PAVLOVICH moved that SB 108 BE CONCURRED IN.

{Tape : 3; Side : B; Approx. Time Counter : 69 - 149}

Motion: REP. TUSS moved that SB 108 BE AMENDED.

Substitute Motion/Vote: REP. PAVLOVICH made a substitute motion that SB 108 BE AMENDED. Substitute motion carried 17-1 with Tuss voting no.

{Tape : 3; Side : B; Approx. Time Counter : 149 - 202}

Motion/Vote: REP. TUSS moved that SB 108 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

{Tape : 3; Side : B; Approx. Time Counter : 202 - 233}

EXECUTIVE ACTION ON SB 169

Motion: REP. MASOLO moved that SB 169 BE CONCURRED IN. Masolo withdrew motion.

{Tape : 3; Side : B; Approx. Time Counter : 233 - 241}

EXECUTIVE ACTION ON SB 189

Motion: REP. TREXLER moved that SB 189 BE CONCURRED IN.

Motion/Vote: REP. TREXLER moved that SB 189 BE AMENDED. Motion carried unanimously.

{Tape : 3; Side : B; Approx. Time Counter : 241 - 270}

Motion/Vote: REP. TREXLER moved that SB 189 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

{Tape : 3; Side : B; Approx. Time Counter : 270 - 330}

# HOUSE OF REPRESENTATIVES

## BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/9/99

| NAME                        | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| Chairman Bruce Simon        | X       |        |         |
| Rep. Paul Sliter            | X       |        |         |
| Rep. Bob Pavlovich          | X       |        |         |
| Rep. Joe Barnett            | X       |        |         |
| Rep. Rod Bitney             | X       | X      |         |
| Rep. Sylvia Bookout-Reineke | X       |        |         |
| Rep. Roy Brown              | X       |        |         |
| Rep. David Ewer             | X       |        |         |
| Rep. Billie Krenzler        | X       |        |         |
| Rep. Bob Lawson             | X       |        |         |
| Rep. Gay Ann Masolo         | X       |        |         |
| Rep. Gary Matthews          | X       |        |         |
| Rep. Joe McKenney           | X       |        |         |
| Rep. Carolyn Squires        | X       |        |         |
| Rep. Jay Stovall            | X       |        |         |
| Rep. Carley Tuss            | X       |        |         |
| Rep. Carol Juneau           | X       |        |         |
| Rep. Cliff Trexler          | X       |        |         |
|                             |         |        |         |
|                             |         |        |         |
|                             |         |        |         |
|                             |         |        |         |

9  
E 3/9/99  
189

COMMENTS:

In follow up to our discussion, I would propose an amendment, which in bill format would read as follows:

(4) LICENSEES SHALL SUBMIT PROOF OF COMPLETION OF CONTINUING EDUCATION WITHIN THE TIME AND IN THE MANNER AS REQUIRED BY THE BOARD. IF A LICENSEE FAILS TO SUBMIT SUCH PROOF, THE BOARD SHALL NOTIFY THE LICENSEE OF THE FAILURE. SUCH NOTICE SHALL ALLOW THE LICENSEE THE OPPORTUNITY, AS REQUIRED BY THE BOARD, TO PRESENT TO THE BOARD THE REASONS FOR SUCH FAILURE. Upon failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education as required by the board, the board may immediately suspend the individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act."

This allows the board to set the time and manner in which the licensees prove they've attended the necessary education. If they do not comply, the board would send out a notice, soliciting the reasons for the licensee's failure. If those reasons, do not show "good cause" for the licensee's failure, the board may suspend the license. After the license is suspended, the licensee may pursue a hearing on the matter.

Let me know your thoughts.

61



## HOUSE STANDING COMMITTEE REPORT

March 9, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 189** (third reading copy -- blue) be concurred in as amended.

Signed:

  
Representative Bruce Simon, Chair

To be carried by Representative Cliff Trexler

**And, that such amendments read:**

1. Page 2, line 16.

Following: "(4)"

Insert: "A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. If a licensee fails to submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure."

2. Page 2, line 17.

Following: "education"

Strike: "as required by the board"

Following: "may"

Strike: "immediately"

- END -

Committee Vote:

Yes 18, No 0.

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3  
62

2<sup>nd</sup> Reading

HOUSE JOURNAL  
FIFTY-SEVENTH LEGISLATIVE DAY - MARCH 13, 1999

Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Sliter, Smith, Soft, Somerville, Squires, Stovall, Swanson, Taylor, Thomas, Trexler, Tropila, Tuss, Williams, Witt, Wyatt, Younkin, Zook.

Total 81

Noes: Adams, Brainard, Curtiss, Davies, Gallus, Jore, McGee, Molnar, Orr, Rehbein, Story, Vick, Wagner, Walters.

Total 14

Voted Absentee: Brown, Hanson, Hurdle, Taylor, Ayes; Adams, No.

Excused: Grinde.

Total 1

Absent or not voting: Bitney, Simon, Tash, Mr. Speaker.

Total 4

**SB 127** - Representative Pavlovich moved **SB 127** be concurred in. Motion carried as follows:

Ayes: Ahner, J. Andersen, S. Anderson, Barnett, Barnhart, Beck, E. Bergsagel, Bitney, Bookout-Reinicke, Brown, Buzzas, E. Clark, P. Clark, R. Clark, Cobb, Curtiss, Dale, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Galvin-Halcro, Gillan, Golie, Guggenheim, Gutsche, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Hurdle, Jackson, Johnson, Juneau, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McKenney, Menahan, Molnar, Mood, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Zook.

Total 86

Noes: Adams, P. Bergsagel, Brainard, Davies, Holden, Jore, McGee, Orr, Rehbein, Vick, Wagner.

Total 11

Voted Absentee: Brown, Hanson, Hurdle, Taylor, Ayes; Adams, No.

Excused: Grinde.

Total 1

Absent or not voting: Kasten, Mr. Speaker.

Total 2

Representative Pavlovich reassumed the chair.

**SB 189** - Representative Trexler moved **SB 189** be concurred in. Motion carried as follows:

Ayes: Adams, Ahner, J. Andersen, S. Anderson, Barnett, Barnhart, Beck, E. Bergsagel, P. Bergsagel, Bitney, Bookout-Reinicke, Brainard, Brown, Buzzas, E. Clark, P. Clark, R. Clark, Cobb, Curtiss, Dale, Davies, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Galvin-Halcro, Gillan, Golie, Guggenheim, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Juneau, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, McKenney, Menahan, Molnar, Mood, Noennig, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters,

HOUSE JOURNAL  
FIFTY-SEVENTH LEGISLATIVE DAY - MARCH 13, 1999

Williams, Witt, Wyatt, Younkin, Zook, Mr. Speaker.  
Total 92

Noes: Jore, Wagner.  
Total 2

Voted Absentee: Adams, Brown, Hanson, Taylor, Ayes.

Excused: Grinde, Hurdle.  
Total 2

Absent or not voting: Gutsche, Hagener, Kasten, Vick.  
Total 4

**HB 524** - Representative Eggers moved **HB 524** do pass. Motion carried as follows:

Ayes: Adams, Ahner, J. Andersen, S. Anderson, Barnett, Barnhart, Beck, E. Bergsagel, Brainard, Buzzas, E. Clark, P. Clark, R. Clark, Cobb, Curtiss, Dale, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Galvin-Halcro, Gillan, Golie, Guggenheim, Gutsche, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Johnson, Juneau, Kitzenberg, Krenzler, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, McKenney, Menahan, Molnar, Mood, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Squires, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Mr. Speaker.  
Total 82

Noes: P. Bergsagel, Bitney, Bookout-Reinicke, Brown, Davies, Jackson, Jore, Kasten, Lawson, Orr, Rehbein, Somerville, Story, Vick, Wagner, Zook.  
Total 16

Voted Absentee: Adams, Hanson, Taylor, Ayes; Brown, No.

Excused: Grinde, Hurdle.  
Total 2

Absent or not voting: None.  
Total 0

**HB 302** - Representative Krenzler moved **HB 302** do pass. Motion carried as follows:

Ayes: J. Andersen, S. Anderson, Barnett, Beck, Bitney, Bookout-Reinicke, Buzzas, E. Clark, P. Clark, R. Clark, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Galvin-Halcro, Gillan, Golie, Guggenheim, Gutsche, Hagener, Haines, Harper, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Juneau, Kitzenberg, Krenzler, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCulloch, McKenney, Menahan, Mood, Ohs, Pavlovich, Peck, Quilici, Raney, Schmidt, Simon, Smith, Soft, Squires, Stovall, Swanson, Tash, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Zook.  
Total 67

Noes: Adams, Barnhart, E. Bergsagel, P. Bergsagel, Brainard, Brown, Cobb, Curtiss, Dale, Davies, Hanson, Jore, Kasten, Lawson, McCann, McGee, Noennig, Orr, Rehbein, Rose, Shockley, Sliter, Somerville, Story, Taylor, Vick,



3<sup>rd</sup> Reading

HOUSE JOURNAL  
FIFTY-EIGHTH LEGISLATIVE DAY - MARCH 15, 1999

Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Hurdle, Jackson, Johnson, Juneau, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, McKenney, Menahan, Molnar, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Vick, Wagner, Walters, Williams, Witt, Younkin, Zook, Mr. Speaker.

Total 81

Noes: Barnhart, E. Bergsagel, P. Bergsagel, Brown, R. Clark, Curtiss, Dale, Galvin-Halcro, Grinde, Jore, Kasten, Mood, Orr, Rehbein, Sliter, Tuss, Wyatt.

Total 17

Excused: None.

Total 0

Absent or not voting: P. Clark, Fisher.

Total 2

**SB 176, as amended by the House**, concurred in as follows:

Ayes: Ahner, J. Andersen, Barnett, Barnhart, Beck, Bookout-Reinicke, Brown, Buzzas, E. Clark, P. Clark, Cobb, Davies, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Gallus, Galvin-Halcro, Gillan, Golie, Guggenheim, Gutsche, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Hurdle, Jackson, Johnson, Juneau, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McKenney, Menahan, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Soft, Somerville, Squires, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tuss, Williams, Witt, Wyatt, Younkin, Zook, Mr. Speaker.

Total 74

Noes: Adams, S. Anderson, E. Bergsagel, P. Bergsagel, Bitney, Brainard, R. Clark, Curtiss, Dale, Fuchs, Grinde, Holden, Jore, Kasten, McGee, Molnar, Mood, Orr, Rehbein, Sliter, Smith, Story, Vick, Wagner, Walters.

Total 25

Excused: None.

Total 0

Absent or not voting: Tropila.

Total 1

**SB 189, as amended by the House**, concurred in as follows:

Ayes: Adams, Ahner, J. Andersen, S. Anderson, Barnett, Barnhart, Beck, E. Bergsagel, P. Bergsagel, Bitney, Bookout-Reinicke, Brown, Buzzas, E. Clark, P. Clark, Cobb, Curtiss, Dale, Davies, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Galvin-Halcro, Gillan, Golie, Grinde, Guggenheim, Gutsche, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Hurdle, Jackson, Johnson, Juneau, Kasten, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, McKenney, Menahan, Molnar, Mood, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Vick, Walters, Williams, Witt, Wyatt, Younkin, Zook, Mr. Speaker.

Total 95

HOUSE JOURNAL  
FIFTY-EIGHTH LEGISLATIVE DAY - MARCH 15, 1999

Nocs: Brainard, Jore, Orr, Wagner.

Total 4

Excused: None.

Total 0

Absent or not voting: R. Clark.

Total 1

**SB 214, as amended by the House**, concurred in as follows:

Ayes: Ahner, J. Andersen, Barnett, Barnhart, Beck, E. Bergsagel, Bitney, Bookout-Reinicke, Brainard, Buzzas, E. Clark, R. Clark, Cobb, Dale, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Gallus, Galvin-Halcro, Gillan, Grinde, Guggenheim, Gutsche, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Jackson, Johnson, Juneau, Kasten, Kitzenberg, Krenzler, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, McKenney, Menahan, Mood, Noennig, Ohs, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Zook, Mr. Speaker.

Total 82

Noes: Adams, S. Anderson, P. Bergsagel, Brown, P. Clark, Curtiss, Davies, Fuchs, Golie, Holden, Hurdle, Jore, Molnar, Orr, Rehbein, Taylor, Vick, Wagner.

Total 18

Excused: None.

Total 0

Absent or not voting: None.

Total 0

**SB 222, as amended by the House**, concurred in as follows:

Ayes: S. Anderson, Barnhart, Beck, Brown, Buzzas, E. Clark, P. Clark, Cobb, Dell, Eggers, Erickson, Ewer, Facey, Gallus, Galvin-Halcro, Golie, Guggenheim, Gutsche, Hagener, Hanson, Harper, Harrington, Hedges, Hibbard, Hurdle, Juneau, Kitzenberg, Lawson, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McKenney, Menahan, Noennig, Pavlovich, Peck, Quilici, Raney, Rose, Ryan, Schmidt, Shockley, Simon, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Williams, Wyatt, Younkin, Zook, Mr. Speaker.

Total 65

Noes: Adams, Ahner, J. Andersen, Barnett, E. Bergsagel, P. Bergsagel, Bitney, Bookout-Reinicke, Brainard, R. Clark, Curtiss, Dale, Davies, Fisher, Fuchs, Grinde, Haines, Holden, Jackson, Johnson, Jore, Kasten, McGee, Molnar, Mood, Ohs, Orr, Rehbein, Sliter, Vick, Wagner, Walters.

Total 32

Excused: None.

Total 0

Absent or not voting: Gillan, Krenzler, Witt.

66

2<sup>nd</sup> Reading

SENATE JOURNAL  
SIXTIETH LEGISLATIVE DAY - MARCH 17, 1999

**SB 72, House Amendments** - Senator B. Keenan moved House Amendments to SB 72 be concurred in. Motion carried unanimously.

**SB 165, House Amendments** - Senator D. Shea moved House Amendments to SB 165 be concurred in. Motion carried unanimously.

**SB 176, House Amendments** - Senator J. Bohlinger moved House Amendments to SB 176 be concurred in. Motion carried unanimously.

**SB 189, House Amendments** - Senator D. Berry moved House Amendments to SB 189 be concurred in. Motion carried unanimously.

**SB 214, House Amendments** - Senator S. Bartlett moved House Amendments to SB 214 be concurred in. Motion carried unanimously.

**HB 275** - Senator D. Eck moved HB 275 be concurred in. Motion carried unanimously.

**HB 304** - Senator A. Ellis moved HB 304 be concurred in. Motion carried unanimously.

**HB 414** - Senator D. Toews moved HB 414 be concurred in. Motion carried unanimously.

**HB 419** - Senator B. Stang moved HB 419 be concurred in. Motion carried unanimously.

**HB 583** - Senator R. Holden moved HB 583 be concurred in. Motion carried unanimously.

**HB 551** - Senator D. Eck moved HB 551 be concurred in. Motion carried unanimously.

**SB 103, House Amendments** - Senator E. Franklin moved House Amendments to SB 103 be concurred in. After discussion, and without objection, consideration of House Amendments to SB 103 was moved to the bottom of the second reading board.

**SB 108, House Amendments** - Senator D. Berry moved consideration of House Amendments to SB 108 be passed for the day. Motion carried unanimously.

**SB 113, House Amendments** - Senator D. Mahlum moved House Amendments to SB 113 be **not** concurred in. Motion carried unanimously.

**SB 243, House Amendments** - Senator F. Thomas moved House Amendments to SB 243 be **not** concurred in. Motion carried unanimously.

**SB 325, House Amendments** - Senator J. Hertel moved House Amendments to SB 325 be **not** concurred in. Motion carried unanimously.

**SB 260, Free Conference Committee** - Senator Devlin moved that consideration of the Free Conference Committee Report on SB 260 be placed below HB 65 of the second reading board this legislative day because the report was not on the members' desks. Motion carried.

**SB 521** - Senator D. Hargrove moved SB 521 do pass. Motion carried unanimously.

3 ✓

SENATE JOURNAL  
SIXTY-FIRST LEGISLATIVE DAY - MARCH 18, 1999

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 48

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Jabs, Toews.  
Total 2

**SB 165, as amended by the House, passed as follows:**

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 48

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Jabs, Toews.  
Total 2

**SB 176, as amended by the House, passed as follows:**

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 48

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Jabs, Toews.  
Total 2

**SB 189, as amended by the House, passed as follows:**

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush,

SENATE JOURNAL  
SIXTY-FIRST LEGISLATIVE DAY - MARCH 18, 1999

Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 48

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Jabs, Toews.  
Total 2

**SB 214, as amended by the House**, passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 47

Nays: Miller.  
Total 1

Absent or not voting: None.  
Total 0

Excused: Jabs, Toews.  
Total 2

**SB 260, Free Conference Committee Report No. 1**, adopted as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.  
Total 45

Nays: Doherty, Eck, Ellingson, Jergeson, Waterman.  
Total 5

Paired: Jabs, Toews, Ayes; Ellingson, Jergeson, Noes.

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 521** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Doherty, Eck, Ekegren, Ellingson, Ellis, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Taylor, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.



AN ACT REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE BOARD OF REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314, AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons -- consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee

conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal."

**Section 2.** Section 37-51-310, MCA, is amended to read:

**"37-51-310. Renewal.** (1) License fees are due and payable for the ensuing licensure period at a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the licensure period automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) A licensee who allows the license to lapse by failing to remit the fees before the expiration date may have the license reinstated by the board by:

(a) within 45 days after the expiration date, providing a satisfactory explanation to the board for the licensee's failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(3) The board may also charge a late fee equal to twice the current renewal fee, but ~~no~~ not less than \$100, to a licensee who does not renew the license as required by subsection (1).

(4) A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. If a licensee fails to submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure. Upon failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education, the board may suspend the individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act."

**Section 3.** Section 37-51-313, MCA, is amended to read:

**"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are

defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A ~~seller's~~ seller agent is obligated to the seller to:

- (a) act solely in the best interests of the seller;
- (b) obey promptly and efficiently all lawful instructions of the seller;
- (c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~seller's~~ seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~seller's~~ seller agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the ~~seller's~~ seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A ~~seller's~~ seller agent is obligated to the buyer to:

(a) disclose to a buyer or the ~~buyer's~~ buyer agent any adverse material facts that concern the property and that are known to the ~~seller's~~ seller agent, except that the ~~seller's~~ seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the ~~buyer's~~ buyer agent when the ~~seller's~~ seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a ~~buyer's~~ buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A ~~buyer's~~ buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~buyer's~~ buyer agent and not known or discoverable by the buyer, unless the information



is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~buyer's~~  
buyer agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the ~~buyer's~~  
buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A ~~buyer's~~ buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the ~~buyer's~~ buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the ~~seller's~~ seller agent when the ~~buyer's~~ buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a ~~seller's~~ seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a ~~buyer's~~ buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a ~~seller's~~ seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a ~~seller's~~ seller agent and is obligated to a buyer in the same manner as a ~~buyer's~~ buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

- (i) the fact that the buyer is willing to pay more than the offered purchase price;
- (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;
- (iii) factors motivating either party to buy or sell; and
- (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

- (i) completion of performance by the agent;
- (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
- (iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

- (a) to account for all money and property of the principal;
- (b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:
  - (i) subsequent conduct by the principal that authorizes disclosure;
  - (ii) disclosure required by law or to prevent the commission of a crime;
  - (iii) the information being disclosed by someone other than the broker or salesperson; and
  - (iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 4. Section 37-51-314, MCA, is amended to read:

"37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed, or, if the seller agent is acting as a seller subagent, at the time negotiations commence; and

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(b)(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed, or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence; and

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(b)(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship ~~disclosure to the buyer and seller at the time negotiations commence;~~ disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent

prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) ~~A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A~~ The initial disclosure must contain as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

~~(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent~~

~~disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.~~

~~———— Your seller agent is obligated to you as follows:~~

~~———— (1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;~~

~~———— (2) to obey promptly and efficiently all lawful instructions of the seller;~~

~~———— (3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~———— (4) to safeguard the seller's confidences;~~

~~———— (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;~~

~~———— (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;~~

~~———— (7) to comply with all applicable federal and state laws, rules, and regulations; and~~

~~———— (8) to carry out the terms of the listing agreement."~~

~~———— (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below:~~

~~———— A seller agent is obligated to a buyer as follows:~~

~~———— (1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;~~

~~———— (2) to deal in good faith with the buyer; and~~

~~———— (3) to comply with all applicable federal and state laws, rules, and regulations.~~

~~———— "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has~~

~~had a communicable disease or that the property was the site of a suicide or felony."~~

~~—— (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost."~~

~~—— Your buyer agent is obligated to you as follows:~~

~~—— (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;~~

~~—— (2) to obey promptly and efficiently all lawful instructions of the buyer;~~

~~—— (3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~—— (4) to safeguard the buyer's confidences;~~

~~—— (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;~~

~~—— (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;~~

~~—— (7) to comply with all applicable federal and state laws, rules, and regulations; and~~

~~—— (8) to carry out the terms of the buyer broker agreement."~~

~~—— (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below."~~

~~—— A buyer agent is obligated to a seller as follows:~~

~~\_\_\_\_\_ (1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;~~

~~\_\_\_\_\_ (2) to deal in good faith with the seller; and~~

~~\_\_\_\_\_ (3) to comply with all applicable federal and state laws, rules, and regulations.~~

~~\_\_\_\_\_ "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

~~\_\_\_\_\_ (c) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below:~~

~~\_\_\_\_\_ A statutory broker is obligated to the parties as follows:~~

~~\_\_\_\_\_ (1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.~~

~~\_\_\_\_\_ (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;~~

~~\_\_\_\_\_ (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and~~

~~\_\_\_\_\_ (4) to comply with all applicable federal and state laws, rules, and regulations.~~

~~\_\_\_\_\_ "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

~~\_\_\_\_\_ (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer~~

~~interested in purchasing the property and of the seller of the property located at (address of property).~~

~~A dual agent is obligated to the buyer and seller as follows:~~

~~\_\_\_\_\_ (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;~~

~~\_\_\_\_\_ (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;~~

~~\_\_\_\_\_ (3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~\_\_\_\_\_ (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;~~

~~\_\_\_\_\_ (5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;~~

~~\_\_\_\_\_ (6) to comply with all applicable federal and state laws, rules, and regulations;~~

~~\_\_\_\_\_ (7) to carry out the terms of the buyer broker agreement; and~~

~~\_\_\_\_\_ (8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:~~

~~\_\_\_\_\_ (a) that the buyer is willing to pay more than the buyer has offered for the property;~~

~~\_\_\_\_\_ (b) that the seller is willing to accept less than the asking price for the property;~~

~~\_\_\_\_\_ (c) factors motivating the buyer to buy or the seller to sell; and~~

~~\_\_\_\_\_ (d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.~~

~~\_\_\_\_\_ "Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or~~



~~existing contract:~~

~~Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent."~~

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(q), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

~~(7)(9)~~ A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction."

Section 5. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,

display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name ~~in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public,~~ a statement that the broker's office is independently owned and operated and or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that capacity by a person;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Section 6. Repealer. Sections 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105,

76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, and 76-4-1117, MCA, are repealed.

**Section 7. Effective date.** [This act] is effective on passage and approval.

- END -